

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JACOB M. BOSLEY,

Plaintiff,

v.

TRUCKEE POLICE DEPARTMENT,

Defendant.

Case No. 2:23-cv-2994-JDP (P)

ORDER; FINDINGS AND
RECOMMENDATIONS

Plaintiff, proceeding pro se, alleges that defendants Calahan and Yarborough, both officers with the Truckee Police Department, violated his Fourth Amendment rights by using excessive force against him during an arrest on September 22, 2023. ECF No. 16 at 3. After reviewing the third amended complaint, I find that the excessive force claim against these defendants is cognizable and should proceed. The other claims in the complaint, however, should be dismissed as inadequately plead and insufficiently related to the excessive force claim. I will direct plaintiff to submit service documents for Calahan and Yarborough and will recommend that his other claims be dismissed.

Screening Order

I. Screening and Pleading Requirements

A federal court must screen the complaint of any claimant seeking permission to proceed *in forma pauperis*. See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Id.*

A complaint must contain a short and plain statement that plaintiff is entitled to relief, Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not require detailed allegations, but legal conclusions do not suffice. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc) (citations omitted).

The court must construe a pro se litigant’s complaint liberally. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). However, “a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled.” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

II. Analysis

Plaintiff alleges that, on September 22, 2023, defendants Calahan and Yarborough, both officers with the Truckee Police Department, violated his Fourth Amendment¹ rights by using excessive force against him during an arrest. ECF No. 16 at 3. He claims both officers pressed their bodyweight against him and made it impossible for him to breathe. *Id.* Plaintiff also claims that he was unnecessarily sprayed with teargas while in his car. *Id.* He alludes to other dates and other officers at the scene, but the complaint fails to make explicit claims against the other officers, and they are not included in the caption of the complaint. Accordingly, only the claims against Calahan and Yarborough should proceed. Plaintiff's other claims should be dismissed.

Plaintiff's allegation that employees of Kimco Realty have harassed him and other homeless individuals in parking lots is non-cognizable for two reasons. First, as noted in my previous screening order, there is no indication that Kimco Realty is a state actor for the purposes of section 1983. Second, plaintiff's claims that unnamed employees have stalked and harassed him are too vague to proceed.² His only specific claim is that, in August 2023, an unnamed employee blocked his car and took pictures of it. *Id.* at 4. This allegation does not give rise to any federal claim and does not appear related to his excessive force claim.

Plaintiff's claim that, on September 20, 2023, unnamed Truckee Police department officers arrested him at a public parking lot is also too vague to proceed. *Id.* at 5. Plaintiff does not name any of the offending officers or indicate what happened during or after the arrest. Neither do his allegations, taken as true, show that this claim is sufficiently related to his excessive force claim.

¹ Plaintiff's section 1983 claim for excessive force proceeds under the Fourth Amendment insofar as it relates to his arrest. *See Graham v. Connor*, 490 U.S. 386, 394-95 (1989).

² I recognize that the complaint contains "additional statements" appended to the main body that add some detail and context to all claims raised in the complaint. ECF No. 16 at 7-11. These added allegations are, in most cases, difficult to trace back to the original claims insofar as they are not organized in any coherent way. Regardless, none of these added statements convince me that the other claims are sufficiently related to proceed with the excessive force claim.

Plaintiff has also filed a "supplemental exhibit" that contains a state habeas petition. ECF No. 17. He does not explain how he intends this petition to relate to his operative complaint and, in any event, a complaint must be complete in itself without reference to other documents. Accordingly, I find it unnecessary to consider or discuss this exhibit.

1 This case has been pending at the screening stage for more than a year, and this is
2 plaintiff's third amended complaint. Accordingly, I find that further opportunities to amend are
3 unwarranted. Plaintiff shall submit service documents for his Fourth Amendment claims against
4 Calahan and Yarborough. His other claims should be dismissed.

5 Accordingly, it is ORDERED that:

6 1. Plaintiff may proceed with the Fourth Amendment claims against Calahan and
7 Yarborough deemed cognizable in this order.

8 2. The clerk of court shall send plaintiff a USM-285 forms, a summons, a Notice of
9 Submission of Documents form, an instruction sheet, and a copy of the complaint filed December
10 11, 2024, ECF No. 12.

11 3. Within thirty days from the date of this order, plaintiff shall complete the attached
12 Notice of Submission of Documents and submit the completed Notice to the court with the
13 following documents:

- 14 a. one completed summons for the defendants;
- 15 b. two completed USM-285 forms; and
- 16 c. three copies of the signed December 11, 2024 complaint.

17 4. Plaintiff need not attempt service on defendant and need not request waiver of
18 service. Upon receipt of the above-described documents, the court will direct the U.S. Marshals
19 Service to serve the above defendant pursuant to Federal Rule of Civil Procedure 4, without
20 payment of costs by plaintiff.

21 5. The failure to comply with this order may result in dismissal of this action for
22 failure to prosecute.

23 6. The Clerk of Court shall assign a district judge to this action.


24 Further, it is RECOMMENDED that all other claims in the third amended complaint be
25 dismissed for the reasons stated in the above findings and recommendations.

26 These findings and recommendations are submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
28 after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Such a document should be captioned
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
3 objections shall be served and filed within fourteen days after service of the objections. The
4 parties are advised that failure to file objections within the specified time may waive the right to
5 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
6 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

7
8 IT IS SO ORDERED.

9 Dated: March 21, 2025


10 JEREMY D. PETERSON
11 UNITED STATES MAGISTRATE JUDGE
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NOTICE OF SUBMISSION OF
DOCUMENTS

In accordance with the court's Screening Order, plaintiff must submit:

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|----------|-------------------------------------------|
| <u>1</u> | completed summons form |
| <u>2</u> | completed forms USM-285 |
| <u>3</u> | copies of the December 11, 2024 complaint |

Plaintiff

Dated: